1054. Cost of Preferred Stock. A firm's cost of preferred stock can be calculated by dividing the total annual preferred dividends by the total proceeds from the issuance of preferred stock. We ask whether the formula in section 65.303 of the Commission's rules remains the correct one, and whether any modification to the formula or inputs is warranted or necessary. The Commission's rules provide that this measurement should occur for the most recent two years. Is this the correct time period, or is a longer or shorter period warranted? Can the WACC calculation be simplified by ignoring the cost of preferred stock (and the amount of preferred stock in the capital structure) without significantly affecting the accuracy of the WACC?

1055. Cost of Equity. A firm's cost of equity can be estimated using a number of different approaches. The Commission's rules do not provide a specific formula for determining the cost of equity. In 1990, the Commission relied heavily on the discounted cash flow (DCF) methodology, which assesses a firm's stock price and dividend rate and forecasted growth rates to determine the cost of equity. 2181 There are a number of different variations of DCF, including historic and classic calculations. 2182 Alternatively, a firm's cost of equity can be calculated using the capital asset pricing model (CAPM).²¹⁸³ To use the CAPM, estimates of the risk free rate, the market risk premium, and the correlation of surrogate companies' common stock returns with the returns of the entire market of securities (or "betas") must be made. We seek comment on these approaches, and ask whether any other methodologies should be incorporated into our analysis. For instance, should we rely upon any cost of equity calculations made in state proceedings addressing intrastate rate of return, or other benchmarks based on the stock market as a whole, or a subset of companies or industries? Proponents of any particular methodology should detail their preferred approach and the relevant data required to perform the necessary calculations. Commenters should also justify the relative weight any particular methodology or comparison should have in our ultimate calculation. We also seek comment on the need, if any, to make adjustments with respect to flotation costs (i.e., costs of selling new securities in the market) or dividends.

1056. Zone of Reasonableness. The cost of equity, based on different methodologies and sets of reasonable assumptions and input values, as well as the WACC calculation using the inputs described above, can be used to develop a range from which the Commission can prescribe the new authorized interstate rate of return. This "zone of reasonableness" allows the Commission to take into account additional policy considerations before finalizing the new rate of return. We seek comment on the factors the Commission should consider in determining the rate of return from within that "zone of reasonableness." We ask how infrastructure deployment, particularly broadband deployment, and today's reforms should be accounted for in our analysis. Is the deployment of broadband significantly more risky than the voice telephony business, and does it have a significantly greater cost of capital? We note, for instance, that voice telephony has nearly universal penetration, while broadband adoption is more than 65 percent nationally. If some or all of the surrogates on which the WACC estimates are based are large companies such as Verizon and AT&T, should unique competitive and market conditions for rate-of-return carriers be reflected, and should any differences in diversification in rate-of-return carrier offerings compared to large carrier offerings, which now may include voice, video, wireless, and data services, be reflected, if at all? Should any allowances made in 1990, or proposed in 1998, apply here? We also seek

²¹⁷⁹ 47 C.F.R. § 65.303.

²¹⁸⁰ 47 C.F.R. § 65.303.

²¹⁸¹ See 1990 Prescription Order, 5 FCC Rcd at 7508, para. 9.

²¹⁸² 1998 Prescription Notice, 13 FCC Rcd at 20573-75, paras. 26-30.

²¹⁸³ 1998 Prescription Notice, 13 FCC Rcd at 20576, para. 33.

²¹⁸⁴ 1998 Prescription Notice, 13 FCC Rcd at 20578-80, paras. 39-42.

comment on the need to make any adjustments to capture changes in the telecommunications market generally, and ask commenters proposing any such adjustments to explain why they are necessary to prescribe the allowable rate of return for multi-use plant that can provide voice, data, video and other services, in particular, and how any such adjustments should be structured. Lastly, we ask whether any of these policy considerations should also be reflected in any other components of the WACC calculation, and, if so, in what manner.

- 1057. Preliminary Analysis. We estimate, using recent public data, the WACC for AT&T and Verizon and find it in the range of 6 to 8 percent. This range is consistent with other analysts' estimates. We find a similar range when considering other mid-size and competitive carriers. Even if the interest rate were to increase by 1.5 percent, which seems unlikely in today's economy, the WACC would remain in the range of approximately 7 to 8 percent. This preliminary analysis would conservatively suggest that the authorized interstate rate of return should be no more than 9 percent. We seek comment on this analysis and note that this preliminary analysis does not prejudge the Commission's ability to select a higher or lower rate of return in this proceeding.
- 1058. Impact on Universal Service Funding. We propose that any reduction in the rate of return be reflected in our universal service rules by reducing the HCLS cap by a corresponding amount, and repurposing that funding amount consistent with the CAF framework and budget adopted today. We also propose that ICLS support be reduced by a corresponding amount as well. We seek comment on these proposals and how to calculate any such reductions. We seek comment on whether any savings realized from reducing the rate of return should be used to establish a new CAF mechanism for rate of return companies that would support new broadband investment. How would a change in the rate of return impact the Rural Association's CAF proposal discussed in this FNPRM, and does this prescription process impact the timing or operation of that proposal or any other transition of rate-of-return carriers to CAF-based support?²¹⁹⁰ In the alternative, we seek comment on the potential benefits of retaining the HCLS cap at the same amount even if the rate of return is reduced, which would have the effect of allowing funding to be redistributed to lower cost rate-of-return carriers that are ineligible for HCLS support today. Are there any other changes to other universal service distribution mechanisms that should be made to reflect a change to the rate of return?
- 1059. Tribally-Owned and Operated Carriers. We seek comment on how to account for Tribally-owned and operated carriers in this prescription, and whether a different rate of return is warranted for these carriers. Tribal governments, and by extension, Tribally-owned and operated carriers,

²¹⁸⁵ AT&T, 2010 Annual Report, available at http://www.att.com/gen/investor-relations?pid=19234; Verizon, 2010 Annual Report, available at http://www22.verizon.com/investor/app_resources/interactiveannual/2010/index.html.

²¹⁸⁶ See, e.g., Bernstein Research— US TELECOMMUNICATIONS AND CABLE & SATELLITE: CAPITAL PUNISHMENT, (December 2010 and May 25, 2011).

²¹⁸⁷ See, e.g., Windstream 2011 Annual Report, available at http://investors.windstream.com/drip.aspx?iid=4121400 (visited Oct. 6, 2011); Frontier 2010 Annual Report, available at http://corporate.frontier.com/default.aspx?m=4&p=4 (visited Oct. 6, 2011); TDS 2010 Annual Report, available at http://media.corporate-ir.net/media_files/irol/67/67422/tds2010AR/index.html (visited Oct. 25, 2011); Cincinnati Bell 2010 Annual Report, available at http://investor.cincinnatibell.com/phoenix.zhtml?c=111332&p=irol-reportsAnnual (visited Oct. 25, 2011).

²¹⁸⁸ McKinsey and Company, Farewell to cheap capital?, 6-8 (December 2010).

²¹⁸⁹See Binyamin Appelbaum, Its Forecast Dim, Fed Vows to Keep Rates Near Zero," N.Y. Times (August 9, 2011).

²¹⁹⁰ See supra Section XVII.B.

play a vital role in serving the needs and interests of their local communities, often in remote, low-income, and underserved regions of the country. Tribally-owned and operated carriers serve cyclically impoverished communities with a historical lack of critical infrastructure. Reservation-based economies lack fundamental similarities to non-reservation economies and are among the most impoverished economies in the country. Tribal Nations also cannot collateralize trust land assets, and as a result, have more limited abilities to access credit and capital. We seek comment on how such considerations should be reflected in our analysis.

1060. Other Considerations. Finally, we ask commenters to address any other changes that are needed to: (1) the data used in the prescription process; or (2) the calculations the Commission must perform to prescribe a new interstate rate of return. We also invite commenters to provide any other relevant evidence or studies that could assist in this represcription.

D. Eliminating Support for Areas with an Unsubsidized Competitor

- 1061. In the Order above, we conclude that we will phase out all high-cost support received by incumbent rate-of-return carriers over three years in study areas where an unsubsidized competitor, or combination of unsubsidized competitors, offering voice and broadband service that meets our performance obligations serves 100 percent of the residential and business locations in the incumbent's study area. ²¹⁹² In this FNPRM, we seek comment on a proposed methodology for determining the extent of overlap, a process for preliminary determinations of such overlap, a process for the affected ETC to challenge the accuracy of the purported overlap, with input from the relevant state commission and the public, and how to adjust support levels in situations with less than 100 percent overlap. ²¹⁹³
- 1062. To determine what rate-of-return study areas have 100 percent overlap by an unsubsidized competitor, staff performed a preliminary analysis as described below. The analysis relies on two sets of data: TeleAtlas Wire Center Boundaries (6/2010) and data from the State Broadband Initiative (SBI) program administered by NTIA as of December, 2010.²¹⁹⁴
- 1063. First, staff identified which census blocks are in each rate-of-return study area, including a census block in a study area if the centroid of that census block is within the TeleAtlas boundaries for a wire center associated with the study area. Next, staff identified study areas where a wired provider other than the incumbent local exchange carrier offered broadband service at speeds of at least 3 Mbps

²¹⁹¹ See Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas; Petition for Reconsideration of Standing Rock Telecommunications, Inc.'s Designation as an Eligible Telecommunications Carrier on the Standing Rock Sioux Reservation, WC Docket No. 09-197, Memorandum Opinion and Order on Reconsideration, 26 FCC Rcd 9160, 9161 (2011) (Standing Rock Final ETC Designation Order).

²¹⁹² As discussed above, for purposes of this requirement, broadband service at speeds of at least 3 Mbps downstream/768 kbps upstream, with capacity limits (if any) that are comparable to residential fixed broadband offerings in urban areas, represents a reasonable proxy. See supra para. 103.

We previously sought comment on proposals to utilize a challenge process to identify areas overlapped by unsubsidized facilities-based competitors. See USF/ICC Transformation NPRM, 26 FCC Rcd at 4674, para. 391; Aug. 3rd Public Notice, 26 FCC Rcd at 11117-11118.

²¹⁹⁴ See National Broadband Map, Download Data, available at http://www.broadbandmap.gov/data-download. All analysis was conducted using 2000 census geographies.

downstream/768 kbps upstream to all of the census blocks in the study area. Staff excluded all resellers as identified in the SBI data and included only xDSL, cable, and fiber technologies.²¹⁹⁵

- 1064. We seek comment on whether this is an appropriate methodology for determining areas of overlap, which will result in adjustments to support levels for the rate-of-return ETC.
- 1065. As summarized in Figure 12 below, using this methodology, staff performed a preliminary analysis examining census blocks smaller than two square miles and identified 18 rate-of-return study areas with 99 percent or greater overlap; and an additional 19 with greater than 95 percent overlap (a total of 37 study areas with greater than 95 percent overlap).²¹⁹⁶

Percent overlap	Number of study	Annual support (2010)	Number of lines supported (2010)*
≥99%	18	\$17.0 million	54,952
At least 95% and less than 99%	19	\$16.7 million	71,794
At least 80% and less than 95%	51	\$98.5 million	511,91 2

^{*} Maximum number of lines supported by any high-cost universal service mechanism in 2010.

Figure 12

1066. This analysis has several potential limitations. TeleAtlas data may not represent the actual incumbent local exchange carrier footprint in all instances. In addition, TeleAtlas data generally assign all geographies to one incumbent provider's footprint or another; however, in reality, there are large, generally unpopulated areas not served by any incumbent carrier facilities. As such, this analysis may over-estimate the rate-of-return ETC's footprint and under-estimate the extent to which the populated portions of that footprint are completely overbuilt by competitive networks.

1067. SBI data have their limitations as well, as we acknowledged in our most recent Broadband Progress Report.²¹⁹⁸ In addition, SBI data only measure the availability of broadband capable of delivering at least 768 kbps downstream and 200 kbps upstream. There is no direct measure of the availability of voice service, but we presume that an unsubsidized xDSL, fiber, or cable competitor that has deployed a broadband network that meets the SBI standard also is offering voice services.

²¹⁹⁵ Specifically, staff used technology codes 10, 20, 40, 41, and 50 from the SBI data submission, excluding 30 to reduce the possibility that the competitor would be a business-focused competitive LEC.

Staff examined blocks smaller than two square miles because of the treatment of such small blocks in SBI data. Small blocks are characterized as either having service at a given speed with a given technology or not. The Commission has noted challenges with this binary treatment of small blocks and taken a lack of reporting about a block as an indication that the block lacks service. See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 10-159, Seventh Broadband Progress Report and Order on Reconsideration, 26 FCC Rcd 8008, 8082-83, App. F. at paras. 9-13 (2011) (Seventh 706 Report). Reporting for larger blocks is more complex, incorporating address- and street-segment level reporting. See id. at App. F, n.35.

²¹⁹⁷ See, e.g., Letter from David Cosson, Counsel to Accipiter Communications Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket. No. 96-45, App. A (filed Mar. 11, 2011).

²¹⁹⁸ See, e.g., Seventh 706 Report, 26 FCC Rcd at 8081-85, App. F (2011)

- 1068. We note that small blocks could be reported as served if as few as one location in that block has service or could have service within a typical service interval.²¹⁹⁹ We seek comment on whether this could lead us to count areas as served by an unsubsidized competitor even if a meaningful number of locations are, in fact, not served.
- 1069. We seek comment on how best to deal with data relating to large blocks. Since neither NTIA nor the Commission has access to the actual location of businesses or homes, SBI population estimates data relies on estimating home locations by random placement of locations along roads. While this will provide an accurate view of the fraction of large blocks that are served in aggregate, it will likely lead to over- or under-estimates in any small number of some large blocks. How can the Commission use such data to determine whether a large block is served or not?
- 1070. As stated in the Order, after receiving further public input on the proposed methodology, the Wireline Competition Bureau will publish a finalized methodology for determining areas of overlap. Using the methodology chosen, the Wireline Competition Bureau will then publish a list of companies for which there is a 100 percent overlap.²²⁰⁰
- 1071. We seek comment on a process for identifying areas with greater than 75 percent overlap. We propose that the Wireline Competition Bureau identify areas with greater than 75 percent overlap, utilizing the finalized methodology, and then publish the results of that analysis. We propose that the Bureau provide the affected ETC an opportunity to challenge the accuracy of the purported overlap and to take public comment for a period of time, such as 45 days. We seek comment on this proposal.
- 1072. Several commenters supported state involvement in a process to determine areas of overlap.²²⁰¹ How could state commissions play a role in determining the extent of overlap? For instance, after the Bureau performs the overlap analysis, should there be a period of time for the relevant state commission to comment on the analysis? What would be a reasonable time frame to request an evaluation from a state commission regarding such overlap? Alternatively, could we establish a process in which state commissions advise us, by a date certain, which study areas served by rate-of-return carriers have unsubsidized facilities-based competitors, and therefore should be subject to potential adjustments in high-cost support?
- 1073. We also seek comment on whether support levels would need to be adjusted in areas where there is less than 100 percent overlap by an unsubsidized facilities-based provider of terrestrial fixed voice and broadband service. To the extent support levels do need to be adjusted, we seek further comment on how to do so.
- 1074. In the Aug. 3rd Public Notice, we sought comment on how to allocate costs between the overlap areas and the ILEC-only areas, including whether we should use a cost model to accomplish that allocation.
- 1075. In response to the Aug. 3rd Public Notice, NCTA recommended that "the Commission should identify study areas served by rate-of-return regulated incumbent LECs where (1) unsubsidized broadband providers serve more than 75 percent of homes; and (2) current high-cost support exceeds projected support under the cost model for the remaining areas by more than 10 percent. During the

Department of Commerce, NTIA, State Broadband Data and Development Grant Program, Docket No. 0660-ZA29, Notice of Funds Availability, 74 Fed. Reg. 32545, 32548 (July 8, 2009) (*NTIA State Mapping NOFA*), available at http://www.ntia.doc.gov/frnotices/2009/FR BroadbandMappingNOFA 090708.pdf.

²²⁰⁰ See supra para. 284.

²²⁰¹ See, e.g., NASUCA August 3 PN Comments at 90; New York PSC August 3 PN Comments at 7; Missouri PSC August 3 PN Comments at 7, n.10.

interim period, in any study area that meets those criteria, the Commission should provide notice to the carrier that support will be reduced to the level suggested by the cost model unless it can demonstrate that a higher amount is necessary." ²²⁰² We seek comment on this proposal.

- 1076. We note that in the Order, we are directing the Wireline Competition Bureau to develop and finalize a cost model for use in price cap territories. Would it be appropriate to use such a model, after appropriate public input, in the way described by NCTA to create a presumptive reduction in support levels for rate-of-return carriers? For purposes of determining whether model-determined support in the "remaining areas" (i.e., the areas of no overlap) exceeded current support by more than 10 percent, would we need to allocate the current high-cost support between the areas of overlap and the areas where there is no overlap? To the extent that support would need to be allocated between areas of overlap and no overlap, what criteria or standards would govern any such allocation? Should there be a rebuttable presumption that all costs are divided pro rata among access lines, and allocated to the census block in which that access line is located, so that absent an appropriate showing the recipient would receive the same support amounts per line, but only for those lines that fall outside the area of overlap? Cablevision suggests that only costs solely attributable to the non-competitive area should be supported, and that most of the costs of overhead (which presumably are largely associated with customers in the areas where there is competitive overlap) should not be recoverable. 2203 Would that be a workable approach? How should the Commission allocate costs associated with cable and wire facilities, and central office equipment, between competitive and non-competitive areas?
- 1077. NCTA suggests that there be a process in which a carrier subject to reductions could demonstrate that a higher amount is necessary. Should reductions commence within a specified time period, such as 120 days, absent a showing that additional support is necessary? What process should be established for rate-of-return carriers subject to potential support adjustments to contest any such adjustments? For instance, should they be required to show that the adjusted levels would be inadequate to continue to provide voice service to consumers, for example, using the criteria we set forth above for petitions for waiver? Should we undertake a total company earnings review in those circumstances? Should we seek input from the relevant state commission on whether support amounts should be adjusted, and how that would impact consumers in the relevant communities?
- 1078. If we were to adopt any of these proposals to adjust support levels, over what time period should support levels be transitioned to new levels in situations where there is less than 100 percent overlap?

E. Limits on Reimbursable Capital and Operating Costs for Rate-of-Return Carriers

- 1079. In the Order, we adopt a rule to use benchmarks for reasonable costs to impose limits on reimbursable capital and operating costs for high-cost loop support received by rate-of-return companies. A specific methodology for calculating individual company caps for HCLS is set forth in Appendix H. We seek comment on using this methodology to impose limits on reimbursement from HCLS and propose to implement this methodology for support calculations beginning July 1, 2012.
- 1080. As described in more detail in Appendix H, the methodology uses quantile regression analyses to generate a set of limits for each rate-of-return cost company study area. These would limit the values used in eleven of the twenty-six steps in NECA's Cost Company Loop Cost Algorithm, which is

²²⁰² NCTA August 3 PN Comments at 12, Attach. at 10. See also Time Warner Cable August 3 PN Comments at 25.

²²⁰³ Letter from Howard J. Symons, Counsel to Cablevision, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Oct. 12, 2011).

used to calculate the study area's total unseparated cost per loop, and ultimately its HCLS.²²⁰⁴ The regression-derived limits are set at the 90th percentile of costs for each individual step in NECA's Cost Company Loop Cost Algorithm, compared to similarly situated companies for each individual step. In other words, a company whose actual costs for a particular step in the algorithm are above the 90th percentile, compared to similarly situated companies, would be limited to recovering amounts that correspond to the 90th percentile of cost, i.e. the amount of cost that ninety percent of similarly situated companies are at or below when they submit costs for that particular step in the algorithm.²²⁰⁵ We seek comment on whether the 90th percentile is the appropriate dividing line to disallow recovery of cost, or whether we should establish a lower or higher threshold, such as the 85th percentile or the 95th percentile.

- 1081. For the dependent variable in the regression analysis, Commission staff limited its analysis to cost data filed by rural rate-of-return companies that submit cost data, and excluded cost data filed by price cap carriers. For the independent variables, staff used 2010 block-level Census data that it mapped to each study area. The independent variables included: number of loops, number of housing units (broken out by whether the housing units are in urbanized areas, urbanized clusters, and nonurban areas), as well as several geographic measures such as land area, water area, and the number of census blocks (all broken out by urbanized areas, urbanized clusters, and nonurban areas). The analysis thereby recognizes that many smaller study areas (those with lower populations to serve) and more rural geographies (those with lower population densities) legitimately have higher costs per line (i.e., compared to the national average cost per loop) than larger study areas that contain significant urban populations.
- 1082. As explained more fully in Appendix H, quantile regression has several advantages over other statistical techniques for identifying outliers. For example, quantile regression estimates the median (or other percentile), rather than the mean, so quantile regression will be more robust in response to large outliers than ordinary least squares regression. Although we find that quantile regression is an appropriate technique to use in setting benchmarks on reimbursable investment and expenses, we invite further comment on alternative statistical techniques.
- 1083. This methodology utilized variables that are currently available to the Commission. We acknowledge that in their analysis using proprietary cost data, the Nebraska Companies also included

²²⁰⁴ See National Exchange Carrier Assoc., Inc., NECA's Overview of Universal Service Fund, Submission of 2010 Study Results, at App. B (filed Sept. 30, 2011) (NECA 2010 USF Overview), available at http://transition.fcc.gov/wcb/iatd/neca.html; 47 C.F.R. §§ 36.621, 36.631.

²²⁰⁵ The "costs" in each step of the NECA algorithm are based on the costs in various categories that the cost companies report to NECA, but some of the steps calculate intermediate values that are used in subsequent steps of the algorithm. See Appendix H.

Rate-of-return study areas affiliated with price cap carriers were excluded because support in those study areas will be frozen at 2011 levels in Phase I CAF and transitioned to Phase II CAF. See supra para. 133. Also excluded were the exchanges that were acquired by other carrier study areas. Pursuant to section 54.305 of the Commission's rules, the acquiring carrier receives support for the acquired exchanges at the same per-loop support as calculated at the time of transfer. See 47 C.F.R. § 54.305. Rural carriers who incorporate acquired exchanges into an existing study area are required to provide separately the cost data for the acquired exchanges and the pre-acquisition study area. See NECA 2010 USF Overview, at 5, App. F, http://transition.fcc.gov/wcb/iatd/neca.html. The Commission does not have readily available data allowing it to separate these exchanges out from the acquiring exchange, but should be able to do so when running the final analysis. Because of the stable nature of the regression analysis used, staff expects the inclusion of these additional exchanges to have only a small effect on the regression coefficients and therefore on the limits created by the analysis.

²²⁰⁷ 2010 United States Census Data, http://www2.census.gov/census_2010/01-Redistricting_File--PL_94-171/ and documentation at http://www.census.gov/prod/cen2010/doc/pl94-171.pdf; Study Area Boundaries: Tele Atlas Telecommunications Suite, June 2010.

variables for frost index, wetlands percentage, soils texture, and road intersections frequency. As noted in the Order, the soils data from the Natural Resource Conservation Service (NRCS) that the Nebraska study used do not cover all the study areas used in our regressions. We seek comment on sources of other soil data that completely cover all the study areas or how to deal with those study areas where the SSURGO data are missing or incomplete. To the extent any commenter advocates use of a methodology that includes additional independent variables, they should identify with specificity the data source and the completeness and cost of the additional data, if not publicly available.

1084. The methodology described in the Appendix establishes limits on recovery from the HCLS mechanism for study areas for which costs in any of the NECA algorithm steps are limited. In the Order, we conclude that support will be redistributed to those carriers whose unseparated loop cost is not limited by operation of the benchmark methodology. Based on 2010 NECA data filed with the Commission, we estimate this proposed methodology would reduce HCLS payments to about 280 rural rate-of-return cost study areas by an estimated \$110 million, with approximately \$55 million redistributed to approximately 340 cost company study areas whose unseparated loop cost is not limited by operation of the benchmark methodology. We thus estimate that more study areas could see increases in HCLS than would see decreases.

1085. In the Order, we conclude that we should also limit recovery of excessive capital and operating costs through the interstate common line support mechanism. In this FNPRM, we seek comment on how specifically to implement such a limit for ICLS.

1086. Interstate common line support is calculated as the residual amount of a rate-of-return carrier's interstate common line revenue requirement minus SLCs and other miscellaneous interstate revenues. Part 69 of the Commission's rules details how carriers are to apportion net investment and expenses in various cost categories for purpose of determining their annual interstate revenue requirements and requires participants in NECA pools and tariffs to file cost data with NECA, but unlike the Part 36 rules, does not require NECA to submit those data to the Commission. To calculate ICLS, USAC receives only a total interstate revenue requirement amount and the interstate revenue amounts for each ICLS recipient. Although the Commission currently does not receive detailed cost data for determining ICLS, we believe the best approach for calculating benchmarks to limit reimbursable capital and operating costs for ICLS would be to use a methodology similar to the one developed for HCLS, and seek comment on this proposal. As discussed above, we modify our rules to require NECA to provide to the Commission upon request underlying data collected from ETCs to calculate payments under the

²²⁰⁸ See supra para. 217 and note 349. These data, called the Soil Survey Geographic Database or SSURGO, do not cover about 24 percent of the United States land mass, including Puerto Rico, Guam, American Samoa, US Virgin Islands and Northern Mariana Islands as well as Alaska which accounts for much of the missing land area. Thus, there are some study areas where there is no SSURGO data (such as the study area served by Adak Tel Utility) and other study areas where the SSURGO data not cover the entire study area.

²²⁰⁹ See supra para. 220.

²²¹⁰ For purposes of this analysis, we estimate the national average cost per loop for purposes of redistributing support to those carriers not affected by the benchmarks to be approximately \$455. This estimate does not take into consideration the impact on the national average cost per loop of other rule changes that we adopt in this Order, such as the removal of price cap-affiliated study areas from HCLS and the updated corporate operations expense limitation formula. Both of these other changes to HCLS will also affect the distribution of HCLS, making it difficult, at this time, to estimate the combined impact of the proposed benchmark methodology and these other changes. Therefore, the actual redistribution among carriers that continue to receive HCLS may vary.

²²¹¹ See 47 C.F.R. §54.901(a).

²²¹² Compare 47 C.F.R. §§ 69.301-69.310, 69.401-69.415, 69.605, with 47 C.F.R. §§ 36.611-36.612.

current support mechanisms, including ICLS.²²¹³ In the Order, we direct NECA to file the detailed revenue requirement data it receives from carriers no later than thirty days after release of the Order so that the Wireline Competition Bureau can evaluate whether it should adopt a methodology using these data.

- 1087. In the alternative, we seek comment on two other alternatives that would not use the detailed revenue data from NECA or require carriers to file additional data. First, we could run a single regression using the total interstate revenue requirement for each carrier, but this approach does not distinguish between capital and operating costs. Second, we could use the decrease in cost per loop resulting from the regressions used to limit HCLS to limit a carrier's interstate revenue requirement. While we recognize that there are some differences between the costs used to calculate unseparated loop costs and the common line revenue requirement, and between loops and access lines, we seek comment on whether they are equivalent enough for purposes of establishing benchmarks for reasonable costs.
- 1088. We seek comment generally on whether network operation and investment by Tribally-owned and operated carriers is significantly different from non-Tribal conditions to warrant special treatment for purposes of establishing benchmarks for permissible capital and operating costs. We seek comment above on whether the 90th percentile is the appropriate dividing line to disallow recovery of costs, or whether we should establish a lower or higher threshold, such as the 85th percentile or the 95th percentile. We seek comment here on whether a different percentile is appropriate for Tribally-owned and operated carriers, or whether we should otherwise alter the methodology to take into account the unique circumstances of Tribally-owned and operated carriers that are just beginning to serve their communities.

F. ETC Service Obligations

- 1089. The Connect America Fund will target funding to areas where federal support is needed to maintain and expand modern networks capable of delivering broadband and voice services where people live, work, and travel. In this section, we seek comment on what Commission action may be appropriate to adjust ETCs' existing service obligations as funding shifts to these new, more targeted mechanisms. We aim to ensure that obligations and funding are appropriately matched, while avoiding consumer disruption in access to communications services.
- 1090. Under section 214 of the Act, the states possess primary authority for designating ETCs and setting their "service area[s],"²²¹⁴ although the Commission may step in to the extent state commissions lack jurisdiction.²²¹⁵ Section 214(e)(1) provides that once designated, ETCs "shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received . . . offer the services that are supported by Federal universal service support mechanisms under section 254(c)." Although we require providers to offer broadband service as a condition of universal service support, under the legal framework we adopt today, the "services" referred to in section 254(e)(1) means voice service, either landline or mobile.
- 1091. The Act and the Commission's rules define the term "service area" and how it is established for each ETC. An ETC's "service area" is a geographic area within which an ETC has

²²¹³ See supra para. 225 (requiring NECA to provide data to the extent USAC does not directly receive such data from carriers).

²²¹⁴ 47 U.S.C. § 214(e)(2)–(3). The term "service area" means "a geographic area established by a State commission (or the Commission under section 214(e)(6)) for the purpose of determining universal service obligations and support mechanisms." 47 U.S.C. § 214(e)(5).

²²¹⁵ 47 U.S.C. § 214(e)(6).

universal service obligations and may receive universal service support.²²¹⁶ Although a carrier seeking to become an ETC usually requests designation in a specific service area, it is the commission designating that carrier—not the ETC itself—that establishes an ETC's service area.²²¹⁷ Nothing in the statute precludes the redefinition of an existing service area, however, for either an incumbent ETC or a competitive ETC at a later date.

- 1092. The Act defines the service area of each rural telephone company to be that "company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board... establish a different definition of service area for such company." When it originally implemented the 1996 Act, acting on the recommendations of the Joint Board, the Commission interpreted this language to mean that "neither the Commission nor the states may act alone to alter the definition of service areas served by rural carriers."
- 1093. In reviewing a potential redefinition of a rural service area when evaluating a request for ETC designation by a competitive ETC, the Commission and the states have traditionally taken into account the three factors recommended by the Joint Board: creamskimming, the Act's special treatment of rural telephone companies, and the administrative burdens of redefinition. The Commission's rules set forth the procedures for considering redefinition petitions and allow either the state commission or the Commission to propose to redefine a rural telephone company's service area. A proposed redefinition, however, does not take effect until the Commission and the appropriate state commission agree upon a new definition.
- 1094. Relinquishment of ETC status is governed by section 214(e)(4) of the Act. That provision directs states (or the Commission, for federally designated ETCs) to "permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier." ²²²³
- 1095. Under the new funding mechanisms established in the Order and proposed in the FNPRM, ETCs may receive reduced support in their existing service areas, and ultimately may no longer receive any federal high-cost support. We seek comment on whether such reductions should be accompanied by relaxation of those carriers' section 214(e)(1) voice service obligations in some cases. For example, under the CAF Phase II process, an incumbent LEC that declines to undertake a state-level service commitment may lose some or all of its ongoing support in that state. Similarly, we will gradually phase out all high-cost support received by incumbent rate-of-return carriers in study areas

²²¹⁶ See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

²²¹⁷ See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

²²¹⁸ 47 U.S.C. § 214(e)(5); see also 47 C.F.R. § 54.207(b); 47 U.S.C. § 153(44) (defining "rural telephone company").

²²¹⁹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8880, para. 187 (1997) (Universal Service First Report and Order) (subsequent history omitted).

Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, paras. 172-74 (1996) (1996 Recommended Decision); see also Highland Cellular Order, 19 FCC Rcd at 6426, para. 9. A carrier "cream-skims" when it serves only those consumers that are least expensive to serve. See Universal Service First Report and Order, 12 FCC Rcd at 8881-82, para. 189.

²²²¹ 47 C.F.R. § 54.207(c), (d).

²²²² 47 C.F.R. § 54.207(c)(3), (d)(2).

²²²³ 47 U.S.C. § 214(e)(4).

where an unsubsidized competitor – or a combination of unsubsidized competitors – offers voice and broadband service that meets the performance requirements for 100 percent of the residential and business locations in the incumbent's study area. Likewise, competitive ETCs that today receive support under the identical support rule will see funding in their existing service areas phased down over time as set forth in the Order, although those ETCs will be eligible for targeted funding to extend advanced mobile services through the Mobility Fund Phase I and Phase II. Some commenters have proposed that as these reductions occur, the Commission should relax or eliminate ETCs' voice service obligations. We seek comment on this suggestion.

1096. In addition, even in service areas where ETCs retain existing support levels or receive greater funding under the Connect America Fund, that funding will increasingly be targeted at the census block level, or to other precisely defined geographic areas. For example, in the Order, we direct the Wireline Competition Bureau to develop a cost model to estimate on a granular level, such as the census block, the amount of support necessary for deployment of a broadband-capable wireline network in highcost areas above a specified threshold, and to use the output of that model to calculate the support that incumbent price cap companies would receive if they undertake state-level broadband service commitments. These price cap ETCs will still be subject to section 214(e)(1) voice service obligations, however, and the model-derived support amount will not include a separate estimate of support for the cost of providing voice service to locations below the specified threshold or those locations that will receive funding from the Remote Areas Fund. Likewise, competitive ETCs that bid for Phase I Mobility Fund support will be required to offer advanced mobile service in specific unserved census areas, but their state or federally-defined service territory may be substantially larger than their bid areas. We seek comment on whether, in situations such as these, some adjustment in affected ETCs' section 214(e)(1) obligation to offer service "throughout [their] service area" may be appropriate. Alternatively, we seek comment on whether we should adopt a federal framework for the process to be used in redefining service areas, by the states or this Commission, as appropriate. What specific modifications to section 54.207 of our rules would be appropriate? Should there be uniform procedures for service area redefinition for ETCs that are incumbent carriers, regardless of whether the incumbent is classified as a rural carrier or a non-rural carrier in a particular study area?

backstopped by the availability of forbearance from federal requirements, provide an appropriate case-by-case framework in which to address these issues in the near term, but we also seek comment on other approaches. To the extent that carriers find that the ETC relinquishment and service area redefinition procedures prove insufficient, we propose that case-by-case federal forbearance would provide an appropriate remedy in the near term, as the Commission gains experience under the new universal service mechanisms established in the Order. Under section 10 of the Act, the Commission must "forbear from applying any regulation or any provision of [the] Act to a telecommunications carrier . . . in any or some of its or their geographic markets," if we find that three conditions are met. As applicable here, these conditions are: "(1) such regulation or provision is not necessary to ensure that the charges [or] practices . . . for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable . . . [;] (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest." The Commission has forborne from the section 214(e)(1) requirement that ETCs offer

Comments of US Telecom Association, GN Docket No. 09-51 et al., at 17 (filed July 12, 2010); ABC Plan Joint Letter, Attach. 1 at 13; Letter from Heather Zachary, Counsel to AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2-3 (filed Oct. 19, 2011); Letter from Kathleen Grillo, Verizon, , to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Sept. 16, 2011); but see Letter from Regina Costa, NASUCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 3 (filed Oct. 3, 2011).

²²²⁵ 47 U.S.C. § 160(a).

service using at least some of their own facilities and the section 214(e)(5) requirement that the service area of a competitive ETC conform to the service area of any rural telephone company service. We see no reason why we could not likewise forbear from the section 214(e)(1) requirement that carriers offer service "throughout [their] service area" if the statutory criteria for forbearance are met. In particular, we note that section 10 expressly grants the Commission authority to tailor forbearance relief to "any or some of [telecommunications carriers'] geographic markets," which we believe would allow the Commission to forbear from enforcing a carrier's section 214(e)(1) obligations in some parts of its service area, while maintaining those obligations elsewhere. We seek comment on our interpretation of section 10, and on our proposal to use case-by-case forbearance to adjust carriers' section 214(e)(1) service obligations under our new funding mechanisms as necessary and in the public interest.

- 1098. We note that some commenters have sought broader modifications to the section 214(e)(1) framework, and we also seek comment on these suggestions as alternatives or supplements to the case-by-case approach we propose. In particular, some commenters suggest that the Commission adopt a rule under section 201 or 254(f) providing that an ETC's section 214(e)(1) "service area" "should be limited to those specific geographies (e.g., wire centers) where the ETC is receiving universal service support."
- 1099. These commenters also suggest that the Commission grant blanket section 10 forbearance "to the extent [section 214(e)(1) requires ETCs to offer service in areas where they receive no universal service support." In the alternative, commenters suggest that the Commission reinterpret section 214(e)(1) to require the provision of service only in areas where those services actually are supported, contending that section 214(e)(1)'s requirement that ETCs offer "the services that are supported" suggests that the service obligation only attaches where support actually flows.
- appropriately balance federal and state roles in the designation and oversight of ETCs? Are they in tension with section 214(e)(4)'s requirement that ETCs may only be allowed to relinquish their designations in "area[s] served by more than one eligible telecommunications carrier," i.e., areas where service will continue even if relinquishment is permitted? Are they in tension with the statutory language in section 214(e)(5) that the service area of a rural telephone company is its study area, unless the Commission and the states, establish a different definition? Are there ways to address this tension and ensure continued voice service to consumers in all areas of the country, while still taking steps to better align targeted funding with service obligations, as some commenters advocate? Is the above proposed interpretation of section 214(e)(1) consistent with that section's requirement that carriers offer "the services that are supported" "throughout the service area for which [their ETC] designation is received"?
- 1101. If the Commission were to establish a general rule that service obligations should only attach in the specific geographies (e.g., wire centers) where the ETC is receiving universal service support, we also seek comment on what would be the appropriate geography to use. Should we use geographies based on the actual network architectures of fund recipients, like wire centers? Or should we pick technology-neutral geographies, such as census blocks, census tracts, or counties? How granular should our definition of the service requirement be? What would be the practical implications of an ETC

Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, 20 FCC Rcd 15095 (2005); Telecommunications Carriers Eligible for Universal Service Support; NTCH, Inc. Petition for Forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b); Cricket Communications, Inc., Petition for Forbearance, WCB Docket No. 09-197, Order, 26 FCC Rcd 13723 (2011).

²²²⁷ Letter from Heather Zachary, Counsel to AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 3-5 (filed Oct. 19, 2011).

²²²⁸ Id. at 5.

having service obligations in certain census blocks and not others within a community (for instance having obligations outside of town, but not within the footprint of an unsubsidized provider that services only the town), and would that variation in obligation result in consumer confusion?

America continue to have access to Lifeline service, both in urbanized areas that will not, going forward, receive support from the new CAF, and in rural areas that will, over time, receive support from the CAF. As a practical matter, how can the Commission ensure that low-income consumers that only wish to subscribe to voice service continue to have the ability to receive Lifeline benefits? We emphasize our ongoing commitment to ensuring that low-income consumers in all regions of the county have "access to telecommunications and information services." Some commenters have suggested that we create Lifeline-only ETCs. As a matter of federal policy, would it thwart achievement of the objectives established by Congress to relieve an existing ETC of the obligation to provide Lifeline if there was no other ETC in that particular area willing to offer Lifeline services?

G. Ensuring Accountability

- 1103. In this section, we seek comment on several additional measures to impose greater accountability on recipients of funding.
- 1104. In the accompanying Order, we create a rule that entities receiving high-cost universal support will receive reduced support should they fail to fulfill their public interest obligations, such as by failing to meet deployment milestones, to provide broadband at the speeds required by the Order, or to provide service at reasonably comparable rates. In addition, in the Order adopting the first phase of the Mobility Fund, we require recipients to obtain a letter of credit in order to receive funding. A Mobility Fund Phase I recipient that fails to comply with the terms and conditions upon which its support was granted will be required to repay the Mobility Fund all of the support it has received as well as a default payment. In this FNPRM, we propose various alternative remedies available to the Commission in the event an ETC fails to comply with our rules regarding receipt of high-cost universal service support.
- 1105. Financial Guarantees. The first alternative remedy we propose for non-compliance with our rules is a financial guarantee. We propose that a recipient of high-cost and CAF support should be required to post financial security as a condition to receiving that support to ensure that it has committed sufficient financial resources to complying with the public interest obligations required under the Commission's rules and that it does in fact comply with the public interest obligations set forth in Section VI of the Order. In particular, we seek comment on whether all ETCs should be required to obtain an irrevocable standby letter of credit (LOC) no later than January 1, 2013. Our goal in proposing this requirement is to protect the integrity of the USF funds disbursed to the recipient and to secure return of those funds in the event of a default, even in the event of bankruptcy.
- 1106. In other sections of this FNPRM, we seek comment on applying post-auction procedures, including performance guarantees, to ETCs that apply for funding after a competitive bidding process. In

²²²⁹ 47 U.S.C. § 254(b)(3).

²²³⁰ See, e.g., ABC Plan Joint Letter, Attach. 1 at 7-9, Sprint USF/ICC Transformation NPRM Comments at 42-43, n.91, Comments of AT&T, GN Docket No. 09-51 et al., at 17-18 (filed July 12, 2010).

²²³¹ See supra Section VII.E.1.e.v.

²²³² Our proposal would require ETCs to provide an LOC issued in substantially the same form as set forth in our model Letter of Credit by a bank that is acceptable to the Commission. See Appendix P. We propose that the requirements for a bank to be acceptable to the Commission to issue the LOC would be the same as those we adopt for LOCs obtained by recipients of Mobility Fund support. See 47 C.F.R. § 54.1007.

this section, we seek comment on adopting financial performance guarantee requirements for ETCs that receive funding through processes other than competitive bidding.

- 1107. Should ETCs that will receive less than a specified amount of support be exempted from any requirement to provide an LOC?²²³³ On what basis should we adopt such a blanket exemption? For instance, should it be based on the aggregate amount of support provided on a study area basis, and at what dollar level should we grant such an exemption?
- 1108. We seek comment on how to determine the amount of the LOC necessary to ensure compliance with the public interest obligations imposed in the Order, as well as the length of time that the LOC should remain in place. For example, the amount of the LOC could be determined on the basis of the ETC's estimated annual funding amount. Should the amount of an initial LOC, or a subsequent LOC, also ensure the continuing maintenance and operation of the network? We also recognize that a recipient's failure to fulfill its obligations may impose significant costs on the Commission and, potentially, on the USF itself if there is a need to provide additional support to another ETC to serve the area. Should the amount of an initial LOC or a subsequent LOC include an additional amount that would serve as a default payment? Under what circumstances should the ETC be required to replenish the LOC? For how long should an ETC be required to keep the LOC in place? Is there a finite time after which the LOC will no longer be necessary to safeguard the Fund?
- 1109. We propose that under the terms of the LOC, failure to satisfy essential terms and conditions upon which USF support was granted, including failure to timely renew the LOC, will be deemed a failure to properly use USF support and will entitle the Commission to draw the entire amount of the LOC to recover that support and any default payment. The Commission, for example, would draw upon the LOC when the recipient fails to meet its required deployment milestone(s) or other public interest obligations. Are there any situations in which we should deem non-compliance to be non-material, and therefore not warrant a draw on the letter of credit? Should recipients be provided a period of time to cure non-performance before drawing on the letter of credit? We propose that failure to comply will be evidenced by a letter issued by the Chief of either the Wireless Bureau or Wireline Bureau or their designee, which letter, attached to an LOC draw certificate shall be sufficient for a draw on the LOC.²²³⁴
- 1110. Penalties. We seek comment on alternatives to the financial guarantees discussed above, including whether revocation of ETC designation, denial of certification resulting in prospective loss of support, or recovery of past support amounts is an appropriate remedy for failure to meet the public interest obligations adopted in the Order.²²³⁵ We also seek comment on the specific circumstances in which these alternatives might apply, if they are different than the specific circumstances in which financial guarantees would apply.
- 1111. We also seek comment on what specific triggers might lead to support reductions, how much support should be reduced, how best to implement support reductions, and how the review and

²²³³ We note that in Section VII.E.1.e.v of the accompanying Order, we declined to limit the LOC requirement to a subset of bidders that fall under certain criteria, such as a specified bond rating, debt/equity ratio and minimum level of available capital.

²²³⁴ While such letter may not foreclose an appeal or challenge by the recipient, the appeal or challenge will not prevent a draw on the Letter of Credit.

²²³⁵ In the E-rate program, we recover support that has been disbursed to recipients when it is determined there has been non-compliance with statutory or specified regulations. See Matter of Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15813-23, paras. 15-44 (2004). In some circumstances, all support for a given funding year is recovered for a given violation, while in other circumstances, funding is recovered on a pro-rata basis. See id.

appeal process should be revised. If we adopt a framework for partial withholding of support, should we establish "levels" of non-performance that would result in the loss of specific percentages of support? For example, should we establish levels one through four of non-compliance, with corresponding loss of support of 25, 50, 75, and 100 percent? If so, what criteria do we use to determine a carrier's level of non-performance?

- 1112. USAC today recovers support when recipients have received support to which they are not entitled, typically accomplishing the recovery through adjustments in future disbursements. Should we adopt rules identifying what constitutes a material failure to perform, warranting recovery of past funding? For instance, should price cap companies be subject to a loss of prospective support for failure to meet intermediate build-out requirements? Should they be subject to recovery of past support amounts if they fail to meet the performance requirements at the end of the five-year term? Should there be a sliding scale for recovery of past amounts depending on the degree to which the carrier fails to meet a specified milestone? Should we continue the current practice of offsetting any support adjustments against future disbursements?
- 1113. Should we adopt rules that create self-executing reductions in support that would be administered by USAC? We note that under our current rules, any party that disputes action by USAC may seek review by the Commission. What additional processes, if any, should we put in place for ETCs to dispute any support adjustments for non-performance?
- 1114. We recognize that under section 214, ETC designation is a responsibility shared between the states and this Commission. We welcome input from our state colleagues on the circumstances in which ETC designations have been revoked by states in the past, and what circumstances might warrant revocation under our reformed Connect America Fund. Should we adopt a national framework for when ETC revocation is appropriate?
- 1115. The State Members of the Universal Service Joint Board suggest that denial of certification which today results in loss of support for the coming year is a draconian remedy that should be available if necessary, but avoidable if possible. We seek comment on what circumstances would justify such a result. The State Members also proposed in their comments that carriers should be disqualified from receiving support during periods in which they fail to provide adequate information to verify continuing eligibility to receive support and adequate to perform support calculations. We seek comment on this proposal. We particularly welcome input from our state partners on how we can ensure there are significant consequences for material non-compliance.
- 1116. An alternative approach might be to separately count compliance with each public interest obligation established in Section VI of the Order, with non-compliance with each individual obligation resulting in the ETC losing a set percentage of support for each obligation it fails to meet. Must non-compliance with an obligation be material? If so, how do we define "material" for these purposes?

H. Annual Reporting Requirements for Mobile Service Providers

1117. In the Order, we seek to take several steps to harmonize and update our annual reporting requirements for recipients of USF support, including extending the current annual reporting requirements to all ETCs. All ETCs that receive high-cost support, except ETCs that receive support solely

²²³⁶ See State Members USF/UCC Transformation NPRM Comments at 140.

²²³⁷ See State Members USF/UCC Transformation NPRM Comments at 55.

²²³⁸ See supra section VIII.A.2.

pursuant to Mobility Fund Phase I, which has separate annual reporting obligations, ²²³⁹ will be required to annually file the information required by new section 54.313 with the Commission, USAC, and the relevant state commission, authority in a U.S. Territory, or Tribal government or authority, as appropriate. In the Order, we also establish new reporting requirements for the annual reports that will ensure that recipients are complying with the new broadband public interest obligations we adopt. ²²⁴⁰ Because Mobility Fund support will differ in some respects from support received under other USF high-cost support mechanisms, in the section of the Order adopting the first phase of the Mobility Fund, we require recipients of Mobility Fund support to file annual reports specific to that program. ²²⁴¹ Mobility Fund recipients that receive support under other high-cost programs may file a separate Mobility Fund annual report or they may include the required information with respect to their Mobility fund support in a separate section of their annual reports filed pursuant to section 54.313. ²²⁴²

- 1118. We seek comment here on whether there are certain requirements in our new annual reporting rule for ETCs, new section 54.313, that do not reflect basic differences in the nature and purpose of the support provided for mobile services. Specifically, we seek comment on whether we should revise the section 54.313 reporting requirements or adopt new reporting requirements that would apply to support an ETC receives to provide mobile services. For example, new section 54.313 requires ETCs to include in their annual reports, beginning with their April 1, 2014 report, information regarding their progress on their five-year broadband build-out plan. What type of similar information would be appropriate to require of mobile service providers who receive support from Phase I or Phase II of the Mobility Fund? ETCs are currently required to report annually on the number of requests for service from potential customers within the ETC's service areas that were unfulfilled during the past year. Should we continue to require this information from mobile service providers in view of the fact that the measure of performance for ETCs receiving Mobility Fund support is coverage of the supported areas, and not the number of subscribers to the supported service?
- 1119. ETCs must also include in their annual reports detailed information on outages that meet certain minimum criteria described in the rule, including the geographic areas affected and the number of customers affected.²²⁴⁵ For mobile service providers, how should the number of affected customers be counted? Should the number of affected customers be the number of customer billing addresses within the affected areas, the average number of customers served by the towers that are out-of-service during the outage, or some other measure?
- 1120. We seek comment on the annual reporting issues raised above and on any other aspects of our annual reporting requirements that commenters believe do not reflect the nature of mobile services being offered and the objectives of the USF support they receive and that require a new annual reporting rule specifically directed to mobile service providers.

I. Mobility Fund Phase Π

1121. The Order we adopt today establishes the Mobility Fund, which will help ensure the

²²³⁹ See supra note 946.

²²⁴⁰ See supra VIII.A.2.

²²⁴¹ See supra paras. 471-474.

²²⁴² See id..

²²⁴³ 47 C.F.R. § 54.313(a)(1).

²²⁴⁴ 47 C.F.R. § 54.313(a)(3).

²²⁴⁵ 47 C.F.R. § 54.313(a)(2).

availability of mobile broadband services across America. This FNPRM addresses specifically the second phase of the Mobility Fund, which provides ongoing support for mobile broadband and high quality voice services. We anticipate disbursements from the second phase of the Mobility Fund to occur as early as the third quarter of 2013. The Order establishes an annual budget of \$500 million, up to \$100 million of which will be reserved to support Tribal lands, including Alaska. We propose rules to use the Mobility Fund Phase II to ensure 4G mobile wireless services in areas where such service would not otherwise be available, and seek comment on certain alternative approaches.

1. Overall Design

1122. We propose to use a reverse auction mechanism to distribute support to providers of mobile broadband services in areas where such services cannot be sustained or extended without ongoing support. We propose that the reverse auction be designed to support the greatest number of unserved road miles (or other units) within the overall Mobility Fund budget. Assigning support in this way would be consistent with our general decision to use market-driven policies to maximize the value of limited USF resources, and should enable us to identify those providers that will make most effective use of the budgeted funds, thereby benefiting consumers as widely as possible. We discuss the proposed framework for the program and the auction mechanism in more detail below, and seek comment on alternatives, including the use of a model to determine both the areas that would receive support and the level of support.

2. Framework for Support Under Competitive Bidding Proposal

a. Identifying Geographic Areas Eligible for Support

- 1123. We seek to provide funding only in geographic areas where there is no private sector business case to provide mobile broadband and high quality voice-grade service. We propose to identify such areas by excluding all areas where unsubsidized 3G or better services are available. We propose to use census blocks as the minimum size geographic unit for identifying eligible areas.
- Identifying Areas Eligible for Support. We propose to identify areas eligible for support on a census block basis, which would permit us to target Phase II support more precisely than if we were to use a larger area. As a proxy for identifying areas where private investment is likely to undertake to provide mobile broadband services, and thus, areas not eligible for support, we propose to use areas where an unsubsidized provider offers 3G or better service based upon the most recent available data prior to auction. Under this proposal, any census block where 3G or better service is available from at least one unsubsidized provider would not be eligible for support. 2247 Census blocks with 2G service available from an unsubsidized provider as well as census blocks where 3G service is provided only by subsidized provider(s) would be eligible. Specifically, we would use American Roamer data to identify areas where there are mobile networks that offer service using EV-DO, EV-DO Rev A, UMTS/HSPA and HSPA+, LTE, and any other technologies offering equivalent speeds or better. As discussed below, we may wish to prioritize support to areas that also lack 2G coverage, and American Roamer data could also be used for this purpose. As with Phase I, we propose to use the centroid method to establish whether service using particular technologies is available to a particular census block. Census blocks that do not have such service would be eligible for Phase II support. We seek comment on these proposals. In particular, we seek comment on whether there are other proxies for determining where private investment will deploy mobile broadband, other data sources, other technologies, or methods other than the centroid method that we should consider in determining whether particular census blocks should be excluded from

²²⁴⁶ See supra section VI (Public Interest Obligations).

We note that any provider that may be offering 3G or better service at the time of a Mobility Fund Phase II auction in an area for which it receives Mobility Fund Phase I support would not be considered unsubsidized.

eligibility for support to promote our objectives.

- 1125. We also seek comment on how a cost model could be used to identify areas for which providers would be able to seek support in a Phase II auction. We note here that US Cellular and MTPCS have filed analyses based on cost models for the deployment of wireless services. Elsewhere, we seek comment on their submissions. In particular, we discuss at greater length below how a cost model could be used both to identify areas where support should be offered and, as an alternative to competitive bidding, to determine the amount of support to be offered. Here, we invite comment on the possibility of using a mobile wireless cost model only to identify the areas that would be eligible for Phase II support, with the actual award of support through a reverse auction. We also seek comment on using other criteria such as the availability of unsubsidized services as discussed above to refine a model-based definition of areas for which providers will be eligible to seek support in the auction. For example, we could make ineligible for Phase II support areas with unsubsidized providers, or areas where any provider has made a public or regulatory commitment to provide unsubsidized service, even if a cost model indicates that costs are high.
- 1126. Minimum Size Unit for Bidding and Support. We propose to identify eligible areas at the census block level, and we also propose that the census block should be the minimum geographic building block for defining areas for which support is provided. Because census blocks are numerous and can be quite small, we believe that the Phase II auction should provide for the aggregation of census blocks for purposes for bidding. That could be done in a number of ways. We could set out by rule a minimum area for bidding comprised of an aggregation of eligible census blocks. In addition, the auction procedures could provide for bidders to be able to make "all-or-nothing" package bids on combinations of bidding areas. Package bidding procedures could specify certain predefined packages, 2248 or could provide bidders greater flexibility in defining their own areas, here comprised of census blocks. We seek comment on two of the possible approaches to aggregating census blocks.
- 1127. Under the Census Tract Approach, the Commission would define a minimum aggregation of blocks by rule, for example by aggregating eligible census blocks based on the census tract in which they lie, so that bidders would bid for support for all eligible census blocks within that tract. ²²⁴⁹ Under the Bidder-Defined Approach, the Commission would not require a minimum aggregation of census blocks, but would establish package bidding procedures that would allow bidders to group the specific census blocks on which they wanted to bid.
- 1128. Census Tract Approach. Under this approach we would create a minimum unit for bidding that is larger than an individual block. For example, we could use a census tract, so bidders would bid for support to serve all the eligible blocks within the census tract. We ask for comment on whether tracts would be an appropriate unit here or whether there is some other minimum grouping of census blocks that would be preferable, such as block groups. Should we use a different minimum geographic unit in areas where census blocks and/or census tracts are especially large? For example, if we group blocks into tracts for bidding, should we consider making an exception if the particular tract is especially large, and use individual blocks or block groups for bidding in those cases, as we have done in Alaska for Mobility Fund Phase I? Regardless of the minimum unit, there are a number of different auction designs that could be used. For example, one possibility would be to use a clock auction format with bidding on tracts. Without package bidding, bidders could manage aggregations of tracts through multiple rounds of bidding. For package bidding, we could allow bidders to flexibly aggregate census

²²⁴⁸ See 700 MHz Auction Procedures Public Notice, 22 FCC Rcd at 18,179-81, paras. 138-144.

²²⁴⁹ Census tracts have between 1,500 and 8,000 inhabitants and average about 4,000 inhabitants. Each census tract consists of multiple census blocks and every census block fits within a census tract. There are over 11 million census blocks nationwide.

tracts (or other units) of their choosing or we could allow bidders to place package bids on pre-defined packages of tracts. We seek comment on bidders' interest in and need for package bidding as it relates to our choice of a minimum unit for bidding and support. Under the Census Tract Approach, as explained below, bidders would be required to serve a specified percentage (e.g., 75 percent) of the units (or road miles, as proposed) in the unserved census blocks.

- 1129. Bidder-Defined Approach. Under this approach, the Commission would not specify a minimum aggregation of census blocks but would provide bidders with considerable flexibility to aggregate the specific census blocks they propose to serve. Bidders would be able to make bids that specify a set of census blocks to be covered, and a total amount of support needed. We seek comment on whether there should be a boundary on bids under such procedures – for example, would it be useful to have a rule that all the census blocks in a given bid must be within a cellular market area (CMA)?²²⁵⁰ Under this approach, a bidder could be permitted to submit several bids, up to a limit that would be specified in the auctions procedures. Bids by that bidder that contained some geographic overlap would be treated as mutually exclusive, i.e., only one could be awarded. Bids that do not overlap could win simultaneously. The Commission would use a computer optimization to identify the set of bids that maximizes the number of eligible road miles (or other supported units) covered subject to the budget constraint. Under this general approach, there may be some limited scenarios where eligible road miles may be covered by multiple winners -i.e., whenever the optimization determines that the set of winning bids that would maximize the total road miles (or other units) covered within the budget requires limited duplicative coverage, we would permit that coverage. We seek comment on whether such an approach could be sufficiently contained to ensure that we are truly making the most efficient use of the fund given limited resources. We also note that allowing overlap among providers could reduce the revenues a bidder expects from customers, and therefore could increase the support a bidder would seek. We seek comment on whether this is a significant concern, and whether it could be addressed by allowing bidders to make bids contingent on the overlap being less than some percentage. In addition, as discussed below, providers would be required to serve all the units in the census block.
- We seek comment on whether a Bidder-Defined Approach, a Census Tract Approach, or another approach would best meet the needs of bidders to take advantage of geographic economies of scale or scope. In order to bid effectively, presumably bidders would need to match eligible census blocks to their business plans, and know the number of road miles (or other supported units) within each census block. As discussed below, prior to an auction, the Wireless and Wireline Bureaus would provide information on the specific eligible census blocks and the units associated with each under the authority we propose to delegate to them. We could provide information through one or more bidder tools on the Commission website. Those tools, for instance, could allow bidders to readily match up their own information on the geographic areas in which they are interested with the blocks available in the auction. Bidder tools could also make readily accessible to potential bidders various online data, including maps, regarding the unserved blocks in which they are interested -- such as associated road mile or population (or other units) data so that bidders could consider potential per-unit bids for coverage of various possible geographic areas. Providing these tools could facilitate participation by small as well as large providers. We seek comment on whether there is additional information or help that the Commission should provide to bidders would need from the Commission or whether the tools needed for this matching and calculation can be developed by bidders.
- 1131. We invite comment on any other advantages and disadvantages of the Census Tract and Bidder-Defined approaches from a provider's perspective. Commenters should address the minimum scale at which providers may want to incorporate Phase II support into their existing networks; the

²²⁵⁰ See supra note 586.

simplicity of the auction mechanism; the ability of providers to capture efficiencies, and to formulate and implement bidding strategies; and ease of administration.

- 1132. Prioritizing Areas. In addition, we seek comment on whether we should target areas currently without any mobile service for priority treatment under Phase II. For instance, should we provide a form of bidding credit that would promote the support of areas with no mobile service at all or only mobile service at lower than current generation or 3G levels? We discuss below in a separate section proposals for targeting Phase II support to Tribal lands, including remote areas of Alaska.
- 1133. We also seek comment on whether we should prioritize coverage to any areas in which previously provided support is being phased down. To the extent that parties believe there is a risk of meaningful loss of coverage, we welcome comments on how to define the areas at risk, and how to address the risk. Once the areas are defined, they could be prioritized, for example, by making available bidding credits for these areas.

b. Establishing Bidding and Coverage Units

- requirement on the number of road miles in each eligible geographic area. Requiring coverage of road miles directly reflects the Mobility Fund's goals of supporting *mobile* services, and indirectly reflects many other important factors such as business locations, recreation areas, and work sites since roads are used to access those areas. And while traffic data might be superior to simple road miles as a measure of actual consumer need for mobile coverage, we have not found comprehensive and consistent traffic data across multiple states and jurisdictions nationwide. Because bidders are likely to take potential roaming and subscriber revenues into account when deciding where to bid for support under Phase II, we expect that support will tend to be disbursed to areas where there is greater traffic. We seek comment, however, on the use of other units for bidding and coverage such as population and workplaces instead of or in combination with road miles.
- 1135. We propose to use the TIGER data collected by the Census Bureau to determine the number of road miles associated with each eligible geographic area. TIGER data is available nationwide on a standardized basis and can be disaggregated to the census block level. We anticipate that the Bureaus would exercise their delegated authority to establish the units associated with each eligible census block and identify the specific road categories within TIGER considered primary, secondary, local, etc. to calculate the units associated with a given area. We seek comment on this proposal.

c. Maximizing Consumer Benefits

1136. Our goal is to maximize the coverage of mobile broadband services supported with our annual Mobility Fund Phase II budget. In contrast to the former rules, under which multiple providers are entitled to an award of portable, per-subscriber support for the same area, we expect that to maximize coverage within our budget we will generally be supporting a single provider for a given geographic area. As discussed above, we would support more than one provider in an area only if doing so would maximize coverage. In particular, we seek comment on whether allowing overlap among providers would unduly compromise our objective to maximize consumer benefits. And we plan to take into account our experience implementing Mobility Fund Phase I to ascertain whether there are ways to further minimize overlap during the implementation of Mobility Fund Phase II. We are mindful that our

²²⁵¹ See 2010 Census TIGER/Line® Shapefiles at http://www.census.gov/geo/www/tiger/tgrshp2010/tgrshp2010.html.

²²⁵² For TIGER road categories, see Appendix F – MAF/TIGER Feature Class Code (MTFCC) Definitions, pages F-186 and F-187 at http://www.census.gov/geo/www/tiger/tgrshp2010/documentation.html.

statutory obligation runs to consumers, rather than carriers, and that we must target limited public funds in a way that expands and sustains the availability of mobile broadband services to maximize consumer benefits. To further protect consumer interests, we also propose to adopt certain terms and conditions, discussed below, to promote leveraging of publicly funded investment by other providers operating in the same areas as a recipient of support under Phase II of the Mobility Fund. We invite comment on this approach, which is consistent with one we have taken elsewhere with respect to universal service support.

II support should be permitted to partner with other providers to fulfill the public interest obligations associated with Phase II. For example, should we permit eligible providers to seek support together, provided that they disclose any such arrangements when applying for a Mobility Fund auction? In addition, we invite comment on whether we should establish any limit on the number of geographic areas for which any one provider may be awarded Phase II support. If we were to do so, what effect would this have on those mobile providers that focus on serving rural areas? Is there another basis on which we should limit the amount of Phase II support that goes to any one provider?

d. Term of Support

- a shorter term. In considering the optimal term for ongoing support, we seek to balance providing adequate certainty to carriers to attract private investment and deploy services while taking into account changing circumstances. How should the timeframes for deployment and private investment be synchronized with the pace of new technology? What is the minimum period for making deployment practicable? In light of possible improvements in technology, would it be more practicable to provide for a longer term and require an increase in performance during the term? Or, would it be more appropriate to provide for a shorter term that reflects the likely life cycle of existing technologies? We seek comment on this proposal and on the option for a shorter term.
- 1139. We also seek comment on whether it is appropriate to establish any sort of renewal opportunity for support, and on what terms. For instance, should we follow our licensing regime which allows for a renewal expectancy if buildout and service obligations have been met? Alternatively, should we take into account the extent to which a recipient utilizes new technologies to exceed the minimum performance requirements established at the outset of the term of support? To what extent should the unforeseen development of new products and services in unsupported areas be taken into account when assessing a support recipient's performance and qualification for renewal?

e. Provider Eligibility Requirements

1140. With a narrow exception, discussed *infra*, we propose to require that parties seeking Mobility Fund Phase II support satisfy the same eligibility requirements that we have adopted with respect to Phase I.²²⁵³ We seek comment on this proposal. Is there any reason to alter the requirements previously adopted in light of the differences between Phase I's one-time support and Phase II's ongoing support? Parties providing suggestions should be specific and explain how the eligibility requirements would serve the ultimate goals of Phase II. While we propose eligibility requirements, we also seek comment on ways the Commission can encourage participation by the widest possible range of qualified parties.

f. Public Interest Obligations

1141. Voice. Today's Order sets out general requirements applicable to all recipients of support from the Connect America Fund, including recipients of Mobility Fund support. Consistent with

²²⁵³ See infra para. 1166.

those requirements, recipients of Mobility Fund support will have to offer voice service that satisfies the public interest obligations shared by all recipients of Connect America Fund support. Likewise, all recipients of Mobility Fund support must offer a standalone voice service to the public.

- Mobile Broadband Performance Requirements and Measurement. Unlike requirement for voice service, recipients' public interest obligations with respect to broadband vary depending upon the particular public interest goal being met by the support provided. We propose that, as for Mobility Fund Phase I recipients that elect to offer 4G service, recipients of Mobility Fund Phase II support will be required to provide mobile voice and data services that meet or exceed a minimum bandwidth or data rate of 768 kbps downstream and 200 kbps upstream, consistent with the capabilities offered by representative 4G technologies. We further propose that these data rates should be achievable in both fixed and mobile conditions, at vehicle speeds consistent with typical vehicle speeds on the roads covered. As we noted in our Order on Phase I, the measurement conditions we propose may enable users to receive much better service when accessing the network from a fixed location or close to a base station. These minimum standards must be achieved throughout the cell area, include at the cell edge, at a high probability, and with substantial sector loading. We seek comment on these initial performance metrics. We also seek comment from providers of services used by people with disabilities, such as Internet-based telecommunications relay services, including video relay services (VRS), and point-to-point video communications or videoconferencing services, as to whether these performance metrics will be sufficient to support such services and communications.
- 1143. In order to assure that recipients offer service that enables the use of real-time applications, we also propose that round trip latencies for communications over the network be low enough for this purpose.
- 1144. We further seek comment on whether, and if so, in what ways these metrics should be modified during the term of support to reflect anticipated advances in technology. We also seek comment from providers of services used by people with disabilities as to whether or not and how these performance metrics should be modified over time to support such services and communications. In the Order we adopt today we note that we expect obligations applicable to certain Connect America Fund recipients will evolve over time to keep pace with technology. We propose that the performance characteristics required of Mobility Fund Phase II recipients likewise be required to evolve over time, to keep pace with mobile broadband service in urban areas. How exactly should those obligations evolve? Should the term of support provided be synchronized with anticipated changes in obligations?
- order to remain qualified for the ongoing support awarded in Phase II. Specifically, consistent with the approach we are taking for Phase I support used to deploy 4G, we propose that providers be required to construct a network offering the required service in the required area within three years. Commenters are invited to address the feasibility of our proposed three year deployment deadline, given the projected availability of 4G equipment and any other issues that may affect deployment, such as compliance with local, state, or federal laws and requirements, and weather. To the extent we modify recipients' public interest obligations over time, we seek comment on when such metrics must be achieved. Should we also adopt interim deadlines for upgrading service to comply with revised requirements with respect to 50 percent of the covered area?
- 1146. If we adopt the Census Tract approach, we propose to require Phase II recipients to provide coverage meeting their public service obligations to at least 75 percent of the road miles in all of the unserved census blocks for which they receive support. To the extent that a recipient covers additional road miles or other units beyond the minimum requirement, we propose to provide support based on its bid unit up to 100 percent of the units associated with the specific unserved census blocks

covered by a bid.²²⁵⁴ If we adopt the Bidder-Defined Area approach, we propose that Phase II recipients should be required to provide coverage meeting their public service obligations to a higher percentage, perhaps to all of the unserved units within the census blocks.

- 1147. We propose that recipients demonstrate that they have met relevant performance and coverage obligations by submitting drive test data, consistent with the industry norm and the provisions we adopt for Phase I. We seek comment on how frequently such data should be submitted during the term of support.
- 1148. Collocation and Voice and Data Roaming Obligations. We have adopted various conditions with which Phase I Mobility Fund support recipients must comply in order to help assure that they do not use public funds to achieve an unfair competitive advantage. More specifically, we require that Phase I recipients allow the collocation of additional equipment under certain circumstances and condition their receipt of support on compliance with voice and data roaming requirements. We seek comment on adopting similar requirements for Phase II recipients. Are there additional requirements we might consider in order to ensure that publicly funded investment can be leveraged by other providers to the extent they may operate in areas that need universal service support?
- 1149. Reasonably Comparable Rates. We seek comment here on how to implement, in the context of the Mobility Fund Phase II, the statutory principle that supported services should be made available to consumers in rural, insular, and high-cost areas at rates that are reasonably comparable to rates charged for similar services in urban areas. We propose that recipients of Phase II support will be subject to the same requirements regarding comparable rates that apply to all recipients of CAF support.
- 1150. We will consider rural rates for service supported by the Mobility Fund to be "reasonably comparable" to urban rates under section 254(b)(3) if rural rates fall within a reasonable range of urban rates for reasonably comparable service. We seek additional comment here with respect to the evaluation of reasonably comparable voice and broadband services for purposes of Mobility Fund Phase II specifically.
- 1151. For purposes of the Mobility Fund, we propose to focus on mobile broadband service that meets the universal service performance characteristics. For instance, we invite further comment as to whether there are additional sources of information or aspects of service to consider in light of the fact that Mobility Fund support is for mobile service over a geographic area. We also seek comment on whether the mobile nature of the service supported by Mobility Fund Phase II, or the pricing of mobile voice and broadband services, present any unique features for purposes of adopting a methodology for evaluating rates under our reasonable comparability standard. We also note in this context that, as described more fully below, we propose to require recipients of funding under Mobility Fund Phase II to provide information regarding their pricing for mobile broadband service offerings.

3. Auction Process Framework

- 1152. In this section, we propose general auction rules governing the auction process itself, including options regarding basic auction design, application process, information and competition, and auction cancellation.²²⁵⁶
 - 1153. As we did for Mobility Fund Phase I, we propose to delegate to the Bureaus authority to

Accordingly, when reserving available support based upon those bids that are determined to be winning bids, the Commission will reserve an amount necessary to pay the support that the recipient would be entitled to in the event that it covered 100 percent of the units in the census blocks.

²²⁵⁵ 47 U.S.C. § 254(b)(3).

²²⁵⁶ See Auction Rules included in Appendix A.

establish detailed auction procedures consistent with the auction rules we establish here, take all other actions necessary to conduct a Phase II auction, and conduct program administration and oversight consistent with any rules and policies we establish for this phase. Under this proposal, a public notice would be released announcing an auction date, identifying areas eligible for support through the auction and the road miles associated with each area, and seeking comment on specific detailed auction procedures to be used, consistent with the general auction rules.

a. Auction Design

- 1154. We propose rules outlining various auction design options and parameters, while at the same time proposing that final determination of specific auction procedures to implement a specific design based on these rules be delegated to the Bureaus as part of the subsequent pre-auction notice and comment proceeding.
- 1155. As a threshold matter, we propose a rule providing that a Phase II auction may be conducted in a single round of bidding or in a multiple round format, or in multiple stages where an additional stage could follow depending upon the results of the previous stage. We also propose that maximum bid amounts, reserve prices, bid withdrawal provisions, bidding activity rules and other terms or conditions of bidding would be established by the Bureaus under the authority we propose to delegate for this purpose. Should reserve prices, for instance, be set using the results of a wireless model for each state, similar to the CAF Phase II auction where price cap carriers decline the state-level commitment? We also propose that the Bureaus may consider various procedures for grouping geographic areas within a bid package bidding that could be tailored to the needs of prospective bidders as indicated during the pre-auction notice and comment period.
- It appears that some form of package bidding will likely enhance the auction by helping bidders incorporate network-wide efficiencies into their bids. While the Bureaus will establish specific procedures to address this issue later, we invite preliminary comment on whether package bidding may be appropriate for this auction and if so, why. Above, we asked for input on package bidding as it relates to our choice of the Census Tract or Bidder-Defined approaches. Here, we ask for any additional comments on the potential advantages and disadvantages of possible package bidding procedures and formats. In particular, we ask for input on the reasons why certain package bidding procedures would be helpful or harmful to providers bidding in an auction, and what procedures might best meet our goal of maximizing the benefits of Phase II support for consumers. For example, regardless of whether we adopt the Census Tract or Bidder-Defined approach, should we impose some limits on the size or composition of package bids, such as allowing flexible packages of blocks or larger geographic units as long as the geographic units are within the boundaries of a larger unit such as a county or a license area (e.g., a CMA)?²²⁵⁷ Or, if we adopt the Census Tract approach, should we establish package bidding procedures that allow bidders to place package bids on predetermined groupings of areas that follow a particular hierarchy – such as blocks, tracts, and/or counties, which nest within the census geographic scheme? As noted above, we contemplate that the specific rules to be adopted for this auction would be identified in the public notice process, which will be open to comment.

b. Potential Bidding Preference for Small Businesses

1157. We seek comment on whether small businesses should be eligible for a bidding preference in a Phase II auction. If adopted, the preference would act as a "reverse" bidding credit that would effectively reduce the bid amount of a qualifying small business for the purpose of comparing it to other bids. The preference would be available with respect to all census blocks on which a qualified small business bids. We seek comment on this approach. Would a bidding credit be an effective way to

²²⁵⁷ See supra note 586.

help address concerns regarding smaller carriers' ability to effectively compete at auction for support? Would such a bidding credit be consistent with the objective of the Phase II fund to support the greatest number of unserved road miles within the overall Mobility Fund budget? Should we adopt a preference to assist small businesses even if the bidding credit results in less coverage achieved than would occur without the bidding credit?

- 1158. We also seek comment on the appropriate size of any small business bidding credit that we decide to adopt. We note that, in the spectrum auction context, the Commission typically awards small business bidding credits ranging from 15 to 35 percent, depending on varying small business size standards. Should the Commission establish a preference for small businesses, we seek comment on what bidding credit percentage, if any, would be appropriate to increase the likelihood that the small business would have an opportunity to win support in the auction..
- 1159. We also seek comment on how we should define small businesses if we adopt a small business bidding credit. In the context of our spectrum auctions, we have defined eligibility requirements for small businesses seeking to provide wireless services on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold.
- context based on an applicant's gross revenues, as we have done for many wireless services for which we have assigned licenses through competitive bidding. Specifically, we ask whether a small business should be defined as an entity with average gross revenues not exceeding \$40 million for the preceding three years. Alternatively, should we consider a larger size definition for this purpose, such as average gross revenues not exceeding \$125 million for the preceding three years? In determining an applicant's gross revenues under what circumstances should we attribute the gross revenues of the applicant's affiliates? We also invite input on whether alternative bases for size standards should be established in light of the particular circumstances or requirements that may apply to entities biding for Mobility Fund Phase II support. Commenters advocating alternatives should explain the basis for their proposed alternatives, including whether anything about the characteristics or capital requirements of providing mobile broadband service in unserved areas or other considerations require a different approach.

c. Application Process

1161. We propose to use a two-stage application process, similar to that used in spectrum license auctions, and as described more completely in the Mobility Fund Phase I Order.²²⁶² Under this

²²⁵⁸ See 47 C.F.R. § 1.2110(f).

We note that the Small Business Administration's definition of a "small business" for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications" is one that has 1,500 or fewer employees. See 13 C.F.R. § 121.201.

²²⁶⁰ See e.g., In re Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), Report and Order, GN Docket No. 01-74, 17 FCC Rcd 1022, 1087 ¶ 172 (2002).

The Commission established a size definition for entrepreneurs eligible for broadband PCS C block spectrum licenses based on gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million. In re Section 309(j) of the Communications Act – Competitive Bidding, Fifth Report and Order, PP Docket No. 93-253, 9 FCC Rcd 5532, *36 ¶ 115 (1994); see also 47 C.F.R. § 24.709(a)(1). Although this definition was used more than a decade ago in the context of spectrum auctions, we seek comment on whether it would be appropriate to use the gross revenues standard of the definition in this universal service context as it would encompass more small businesses.

²²⁶² See supra para. 417.

proposal, we would require a pre-auction "short-form" application from entities interested in participating in a Phase II auction. After the application deadline, Commission staff would review the short-form applications to determine whether applicants had provided the necessary information required at the short-form stage to be eligible to participate in an auction. Once review is complete, Commission staff would release a public notice indicating which short-form applications were deemed acceptable and which were deemed incomplete. Applicants whose short-form applications were deemed incomplete would be given a limited opportunity to cure defects and to resubmit correct applications. Only minor modifications to an applicant's short-form application would be permitted. The Commission would release a second public notice designating the applicants that qualified to participate in the Phase II auction. We seek comment on our proposal, and on any alternative approaches.

d. Information and Communications

auction policies regarding permissible communications during the auction or the public release of certain auction-related information. Hence, as in Phase I and our spectrum auctions, we propose, in the interests of fairness and maximizing competition, to prohibit applicants from communicating with one another regarding the substance of their bids or bidding strategies. We further propose a rule to provide for auction procedures to limit public disclosure of auction-related information, including certain information from applications and/or the bidding. Specific details regarding the information to be withheld would be identified during the pre-auction procedures process, upon delegated authority to the Bureaus. We invite comment on this proposal.

e. Auction Cancellation

1163. We propose that the Commission's rules provide discretion to delay, suspend, or cancel bidding before or after a reverse auction begins under a variety of circumstances, including natural disasters, technical failures, administrative necessity, or any other reason that affects the fair and efficient conduct of the bidding. We seek comment on this proposal, which is consistent with our approach in spectrum auctions, as well as Phase I of the Mobility Fund.

f. Post-Auction Long-Form Application Process for Mobility Fund Phase II

1164. We propose to apply the same post-auction long-form application process adopted with respect to Phase I for Phase II support. Accordingly, applicants for Phase II support would be required to provide the same showing in their long-form applications that they are legally, technically and financially qualified to receive Phase II support as required of applicants for Phase I support. In addition, we propose that a winning bidder for Phase II support will be subject to the same auction default payment adopted for winning bidders of Phase I support, if it defaults on its bid, including if it withdraws a bid after the close of the auction, fails to timely file a long form application, is found ineligible or unqualified to be a recipient of Phase II support, or its long-form application is dismissed for any reason after the close of the auction. In addition, we propose that a recipient of Phase II support will be subject to the same performance default payment adopted for recipients of Phase I support. We seek comment on these

²²⁶³ "Long-form" application requirements, required of winning bidders post-auction, are discussed *infra* at para. 1164.

²²⁶⁴Cf. § 1.2105(b)(2). See 47 C.F.R. § 1.21001(d)(5).

²²⁶⁵ See 47 C.F.R. § 1.21001(d)(4). Major modifications would include, for example, changes in ownership of the applicant that would constitute an assignment or transfer of control.

²²⁶⁶ Cf. 47 C.F.R. § 1.2105(c).